UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

By Electronic Mail and UPS

Thomas P. Jacobus, General Manager
Washington Aqueduct
5900 MacArthur Blvd., N.W.
Washington, DC 20016-2514

Dear Mr. Jacobus:

The United States Environmental Protection Agency, Region III ("EPA") has received the Washington Aqueduct's written request dated May 24, 2010 for a modification of the Federal Facility Compliance Agreement ("FFCA") between the Washington Aqueduct and EPA, Docket No. CWA-03-2003-0126DN and its amendments. The requested modification is for an extension of the final compliance deadline listed in paragraph 22 of the FFCA. Currently, relevant portions of paragraph 22 provide that the schedule shall achieve full compliance with the numeric discharge limitations set forth in the National Pollutant Discharge and Elimination System Permit No. DC0000019 ("NPDES Permit") at all sedimentation basins no later than November 30, 2010. The Aqueduct has requested that the date for achieving full compliance with the numeric discharge limitations set forth in the NPDES Permit be extended to September 30, 2011.

The Aqueduct's May 24, 2010 letter sets forth the basis for this request. According to the Aqueduct, there were initial delays in the drilled pilings which will support the foundation of the main structure of the residuals processing facility which being constructed as part of the Aqueduct's treatment for achieving the numeric discharge limits. These delays have not been overcome by the contractor to the Aqueduct. The ancillary facilities at the Dalecarlia Water Treatment Plant sedimentation basins and the Georgetown sedimentation basins could be ready within the time allowed by the original agreement, but without the thickeners and the centrifuges housed in the main facility structure the pumping and dewatering process cannot begin.

In addition to the delay due to piling drilling for the main building, the new system cannot begin operation unless the sedimentation basins are cleaned. If the basins are not cleaned the build up of residuals will damage the new equipment at startup. The Aqueduct estimates that the construction of the all elements of the residuals processing facility will be complete in May of 2011. However, because of the permit and FFCA prohibit (absent an approved upset or bypass situation) discharge through Outfalls 002, 003 and 004 during the spring spawning season, discharges from the basins cannot occur between February 15 and June 30 of each year. Thus, the Aqueduct cannot discharge the basins prior to commissioning the new equipment until July 1, 2011.

The Aqueduct's May 24, 2010 letter demonstrates a need for the extension based upon the schedule of work that is needed for completion and the prohibition to discharge.

In accordance with the mutual agreement between the Washington Aqueduct, EPA the Northeast Region National Marine Fisheries Service ("NMFS"), the Chesapeake Bay Field Office of the US Fish and Wildlife Service ("USFWS"), and the National Capital Region of the National Park Service ("NPS"), ("collectively the Services"), which was entered into in September of 2003, the Washington Aqueduct has also notified the Services regarding this matter. On June 1, 2010 the USFWS advised EPA that it would defer to the judgment of EPA and NMFS on this matter. In June 2010, EPA and the Services met with the Washington Aqueduct to observe the new construction and to review the construction schedule.

While not required to do so, in light of prior public interest in the FFCA and construction of the residuals processing facility, EPA sought public comment on the Aqueduct's extension request through a posting on EPA's website and by mailing a notice and request for comment to persons who previously had expressed interest in the project. No comments have been received. In addition, EPA initiated consultation with the National Marine Fisheries Service regarding the extension request. NMFS issued a Biological Opinion and Incidental Take Statement on November 29, 2010.

Accordingly, the Washington Aqueduct's request for an extension of the completion deadline for full treatment of the residuals by the new residuals processing facility until September 30, 2011 is approved with the following conditions:

(1) In the event of a discharge during the 2011 Shortnose Sturgeon Spring Spawning Season as that term is defined in NPDES Permit No. DC0000019, the Washington Aqueduct shall undertake the actions described in Sections II.B.3.c.iii, II.B.3.c.iv, II.B.4.c.vi, III.C.1, III.D.2, III.E.1, and III.E.2 of the NPDES Permit notwithstanding the fact that the NPDES permit states some or all of those obligations will cease the sooner of November 30, 2010 or completion of the residuals processing facility.
(2) In the event of a discharge during the 2011 Shortnose Sturgeon Spring Spawning Season as that term is defined in NPDES Permit No. DC0000019, the Washington Aqueduct must model the 100mg/L contour and the zone where sediment deposition of 2mm is exceeded.
(3) In the event of a discharge during the 2011 Shortnose Sturgeon Spring Spawning Season as that term is defined in NPDES Permit No. DC0000019, the Washington Aqueduct shall exercise best efforts to notify researchers known to be working on the Potomac River to notify them of the pending discharge and to document the location of any tagged shortnose sturgeon prior to, during and following the discharge.

EPA expects that the Washington Aqueduct will continue to use its best efforts to avoid any additional delays in this construction project.

Thank you for your continued attention to this matter. If you have any technical questions, please feel free to contact Andrew Seligman at 215-814-2097 or if any legal questions arise you may call Stefania Shamet, senior attorney at 215-814-2682.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Cc: Colin Burrell, DC DOE